IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1200 OF 2003

Smt Kavita G Tiwari, .. Petitioner
Vs
The Administrative Officer,
Ulhasnagar Municipal School,
Board and ors. .. Respondents

WITH

WRIT PETITION NO.1205 OF 2003

Smt Urmila Girish Verma .. Petitioner
Vs
The Administrative Officer,
Ulhasnagar Municipal School,
Board and ors. .. Respondents

WITH

WRIT PETITION NO.1217 OF 2003

Smt Suniti S Vyas .. Petitioner

Vs

The Administrative Officer,
Ulhasnagar Municipal School,
Board and ors. .. Respondents

Ms Kumud Bhatia, for the petitioner.
Mr S.P.Kadam for R.No.1.
Mrs M.P.Thakur, AGP for R.Nos 2 to 4

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.
DATE : 16.9.2005
ORAL ORDER: (PER V.G.PALSHIKAR, J.)

1. Heard learned counsel for the parties.

2. By these petitions, the petitioners, who were teachers, have challenged the action of the respondent-State in directing recovery of excess salary

paid to the petitioners and the action of the management in factually recovering the same as per the direction.

3. The State of Maharashtra directed recovery of the excess amount paid on the basis that the petitioners, when appointed as assistant teachers, were having qualification of graduate in one or other branch and Bachelor of Education. Obviously, the petitioners were qualified teachers for classes in primary section and high school. However, a direction was issued without giving any opportunity of hearing to the petitioners and to show cause why such recovery should not be undertaken after a period of 11 years has elapsed. The State and the Management had paid the salary on the basis that the petitioners were trained teachers for 11 long years. We need not go into the question whether the petitioners were factually paid in excess as also the question whether the petitioners were not trained teachers though they have qualification for B.Ed for the simple reason that the order on the face of it is in breach of principles of natural justice.

4. Had such notice to show cause been given, the petitioners could have pointed out to the concerned authority (i) that the petitioners are the trained teachers; (ii) that the payment was properly made; (iii) it could not be recovered after eleven years after the payment was made. There being no reason for not

correcting the error earlier. Denial of such opportunity has resulted in serious injury of financial nature to the petitioners and amounts of more than lacs are sought to be recovered. In our opinion, the order of recovery and the subsequent recovery, if any, made is unsustainable in law, being violative of principles of natural justice. We, therefore, allow these petitions, quash the order directing recovery and further direct that the recovery, if any made, be refunded to the petitioners at the earliest possible. The writ petitions are accordingly disposed of. Rule made absolute. No order as to costs.

(D.B.BHOSALE, J.) **(V.G.PALSHIKAR, J.)**

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NOS.1200, 1205 & 1217 OF 2003

Date of Judgment:

September 16, 2005

For approval and signature

THE HON'BLE MR.JUSTICE V.G.PALSHIKAR.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?